

Federal Communications Commission

DA 01-2103

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 SEP 10 P 3: 20

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Shelbyville and LaVergne, Tennessee)

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MM Docket No. 01-224
RM-10101

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NOTICE OF PROPOSED RULE MAKING

Adopted: August 29, 2001 ; Released: September 7, 2001

Comment Date: October 29, 2001

Reply Comment Date: November 13, 2001

By the Chief, Allocations, Branch

1. The Allocations Branch has before it a petition for rule making petition filed by WYQC, Inc. ("petitioner"), licensee of Station WZPC(FM), Shelbyville, Tennessee, proposing the reallocation of Channel 275C1 from Shelbyville to LaVergne, Tennessee, and the modification of Station WZPC(FM)'s license accordingly. Petitioner states its intention to apply for the channel, if reallocated to La Vergne.

2. The proposal was filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that La Vergne is an incorporated city with a population of 18,687 persons.¹ La Vergne is self-governing with its own Mayor, Vice Mayor, Aldermen, City Administrator, Police Department, Fire Department, Public Works Department, City Recorder, Tax Collector, Library Director, Finance Department, and Department of Planning and Codes. There are also three elementary schools, one middle school, one senior high school, numerous churches, organizations, and businesses. Since the 70 dBu signal of WZPC(FM) at La Vergne, Tennessee encompasses

¹ All population figures are taken from the 2000 U.S. Census.

66.5% of the Nashville Urbanized Area, petitioner has provided the required Tuck analysis.² Petitioner proposes no change in the transmitter site for the reallocation of Channel 275C1 to La Vergne, therefore, no gain and loss area study is required. Petitioner asserts that the reallocation would result in a preferential arrangement of allotments pursuant to Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).³ Petitioner states that the reallocation would provide La Vergne with its first local aural transmission service without depriving Shelbyville (population 16,105) of its sole local service, whereas Stations WBIA(NCE-FM), WLJL(AM) and WZNG(AM) would remain licensed to the community.

3. The Commission now allows a station to change its community of license despite the presence of pre-1964 and pre-1989 "grandfathered" short-spacings and those permitted under Section 73.215 of the Commission's Rules. See Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992) (pre-1964 "grandfathered" short-spacing); Oceanside and Encinitas, California (pre-1989 "grandfathered" short-spacing); and Killeen and Cedar Park, Texas, 13 FCC Rcd 18790 (1998) (Section 73.215 short-spacing). Consistent with that policy, we note that Station WZPC(FM) a pre-1964 "grandfathered" station that is short-spaced to Station WKDF(FM), Channel 277C, Nashville, Tennessee. However, since Station WZPC(FM) does not seek to change its transmitter site, no new short-spacing would be created, and no existing short-spacing would be exacerbated, Station WZPC(FM) should be afforded the opportunity to change its community of license.

4. We believe that soliciting comments on the proposal warrants consideration, since the reallocation could provide La Vergne, Tennessee with its first local aural transmission service, without depriving Shelbyville of its sole local service. An engineering analysis has determined that Channel 275C1 can be reallocated to La Vergne in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's presently licensed site.⁴ As requested, we propose to modify Station WZPC(FM) license to specify Channel 275C1 at La Vergne as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 275C1 at La Vergne, Tennessee.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

² See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

³ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

⁴ The reference coordinates for Channel 275C1 at La Vergne are 35-48-01 North Latitude and 86-37-17 West Longitude.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Shelbyville, Tennessee	275C1	---
La Vergne, Tennessee	---	275C1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before October 29, 2001, and reply comments on or before November 13, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultants, as follows:

Patricia M. Chuh
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. IT IS ORDERED, That the Secretary Shall Send, by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making to the following:

WYCQ, Inc.
P. O. Box 150846
Nashville, Tennessee 37215
(Licensee of Station WZPC(FM))

10. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making

proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W., Washington, D.C.